IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 19.07.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.R.C.No.730 of 2003

N.Somasundaram .. Petitioner/Petitioner

vs.

A.V.Ramachandaran .. Respondent/Respondent

Prayer: This revision filed under section 397 r/w 401 of Crl PC has been preferred against the judgment dated 18.4.2001 in C.A.No.264 of 1999 passed by the VI Additional Judge, City Civil Court, Chennai, modifying the judgment in C.C.No.6561 of 1996 on the file of the XIII Metropolitan Magistrate, Egmore, Chennai, dated 24.9.1999.

For Petitioner : Mr.S.Srinivasan

For Respondent : Mr.M.Prem Kumar

JUDGMENT

This revision has been preferred against the judgment in CA.No.264 of 1999 on the file of the VI Additional Judge, City Civil Court, Chennai, which has arisen out of the judgment in C.C.No.6561 of 1996 on the file of the XIII Metropolitan Magistrate, Egmore, Chennai.

2.A private complaint was preferred by the complainant under Section 200 of Cr.P.C., against the accused for an offence under Section 138 of the Negotiable Instruments Act on the ground that on 22.3.1995 the accused had borrowed Rs.50,000/- and also on 8.4.1995 he had borrowed another sum of Rs.50,000/- from the complainant and had drawn a cheque for Rs.1,15,000/- on 10.7.1996 in favour of the complainant and when the same was presented in Bank of Baroda, Mount Road Branch, Chennai, the same was returned as "not arranged for". The complainant had sent a notice informing the dishonour of the cheque on 19.7.1996, which was received by the accused and a reply notice was sent by the accused, but the accused has not chosen to repay the amount. Hence, the complaint.

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3.After taking the complaint on file, the learned Judicial Magistrate had issued summons to the accused and on his appearance copies under Section 207 of Cr.P.C., were furnished to the accused and when the charge levelled against the accused was explained to the accused, he pleaded not guilty. On the side of the complainant, P.W.1 & P.W.2 were examined and Ex.P.1 to Ex.P.9 were marked.

4.P.W.1 is the complainant. He would narrate what he had stated in his private complaint. Ex.P.1 is the impugned cheque dated 10.7.1996 drawn by the accused in favour of the complainant for a sum of Rs.1,15,000/-. Ex.P.2 is the return memo sent along with Ex.P.1-impugned cheque by Bank of Baroda, Anna Nagar Branch, stating the reason for the return of the cheque as 'nor arranged for'. Ex.P.3 is the letter also sent along with Ex.P.1. Ex.P.4 is the copy of the notice dated 19.7.1996. Ex.P.5 is the acknowledgment. Ex.P.6 is the reply notice, in which the accused had admitted his liability to the tune of Rs.89,188/-. Ex.P.7 is the rejoinder notice dated 21.8.1996. Ex.P.8 is the acknowledgment.

5.P.W.2 is the Manager of Indian Oversees Bank, Ambatur Industrial Branch. According to him, Ex.P.1-cheque was forwarded to their bank on 16.7.1998 but the same was returned with an endorsement 'nor arranged for'. Ex.P.2 is the return memo. Ex.P.9 is the copy of the statement of accounts.

6.When incriminating circumstances were put to the accused, he would deny his complicity with the crime. On the side of the accused D.W.1 & D.W.2 were examined and Ex.D.1 & Ex.D.2 were marked. The learned trial judge after meticulously going through the evidence both oral and documentary has come to the conclusion that the accused is liable to be convicted under Section 138 of the Negotiable Instruments Act and sentenced to pay a fine of Rs.2,30,000/- with default sentence and further directed that out of the fine amount Rs.1,15,000/- shall be given to the complainant as compensation under Section 357 of Cr.P.C. Aggrieved by the findings of the learned trial judge, the accused had preferred an appeal in C.A.No.264 of 1999 before the VI Additional Judge, City Civil Court, Chennai. The learned first appellate Judge, after scanning the evidence and also after giving due deliberations to the submissions made on behalf of the appellant as well as the respondent, has confirmed the conviction, but modified the sentence to that of a fine of Rs.5000/- with default sentence and also awarded Rs.1,00,000/- towards compensation under Section 357 (3) of Cr.P.C., which necessitated the accused to approach this Court by way of this revision.

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7.Now the point for determination in this revision is whether the conviction and sentenced passed by the learned first appellate judge is sustainable for the reasons stated in the memorandum of revision?

8.The Point:- 8(a) Ex.P.1 is the impugned cheque for Rs.1,15,000/- drawn by the accused in favour of the complainant. The learned counsel for the revision petitioner would contend that Ex.P.1 is the blank cheque and the contents in it were written by the complainant himself and that the blank cheque was handed over to the complainant only for the purpose of dispersing arrears of pay to the employees of the firm conducted jointly by the complainant and the accused. The case of the complainant is that the accused had borrowed Rs.50,000/- on 23.2.1995 and another Rs.50,000/- on 8.4.1995 and to discharge the said loan amount the accused had drawn a cheque for Rs.1,15,000/- on 10.7.1996. In support of the contention that the cheque under Ex.P.1 was drawn only for the purpose of dispersing the salary of the employees the accused had examined two witnesses viz. D.W.1 & D.W.2. D.W.1 would depose in his chief examination that for the joint enterprises conducted by the complainant and the accused in the name and style of S.R. Enterprises, the complainant had invested Rs.10,000/- and the accused had invested Rs.10,000/- as working partners and that a months salary for the employees was due and only to disperse the arrears of salary for the employees the accused had drawn a blank cheque. But in the cross-examination D.W.1 would categorically admit that the accused had borrowed Rs.50,000/- on one occasion and also another Rs.50,000/- on another occasion. D.W.2 would also state that the accused had sent a cheque for Rs.5,000/- through him in order to disperse the arrears of salary for the employees and that he had only signed in the cheque dated 8.11.1995 without filling the rest of the particulars in the cheque. It is nobody's case that a cheque for Rs.5,000/- alone was drawn by the accused, but D.W.2 would say that the accused had drawn a cheque for Rs.5,000/- on 8.11.1995, so it goes without saying that D.W.2 has not deposed about the impugned cheque-Ex.P.1 because according to the accused it was a blank cheque. On the other hand, D.W.1, the first witness examined by the accused, would admit in the cross-examination that the accused had borrowed Rs.1,00,000/- in two occasions each for Rs.50,000/- from the complainant, but gave a blank cheque. To show that there was arrears of salary to the employees of the firm run by the complainant and the accused absolutely there is no document produced by the accused. Ex.D.1 is the xerox copy of the partnership deed and Ex.D.2 is the police complaint preferred by the accused against the complainant under Section 420 IPC. It is not known whether the police have taken any action on the

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complaint preferred by the accused against the complainant. Even, according to P.W.1, the partnership firm was dissolved on 8.5.1995, if it is so, there is no necessity to prefer a complaint by the accused against the complainant in the year 1999 (25.2.1999) under Ex.D.2. As rightly observed by the Courts below that the presumption under Section 118 & 139 of the Negotiable Instruments Act is that the cheque was drawn for the discharge in whole or in part of the debt or other liability. Except Ex.D.2-complaint preferred by the accused in the year 1999 against the complainant, there is no other complaint or notice given by the accused to the complainant demanding the return of the alleged blank cheque from the complainant. The present complaint was preferred by the complainant in the year 1996. Subsequent to the filing of the private complaint only the accused has preferred Ex.D.2-complaint against the complainant in the year 1999 i.e., there years after the filing of the private complainant. Under such circumstances, I do not find any reason to interfere with the findings of the learned first appellate Judge in C.A.No.264 of 1999 on the file of the VI Additional Judge, City Civil Court, Chennai, in holding that the accused is guilty under Section 138 of the Negotiable Instruments Act.

8(b)When coming to the question of sentence, the learned first appellate Judge, has modified the sentence of the learned trial judge and imposed a fine of Rs.5,000/- with default sentence and also awarded a compensation of Rs.1,00,000/- under Section 357 (3) of Cr.P.C. But as per the ratio decidendi in 2004(2) SCC 235 (Goa Plast (P) Ltd. Vs. Chico Ursula D'Souza), in a case of similar nature, it has been held by the Honourable Apex Court that only double the cheque amount is to be awarded as compensation. The relevant observation of the Honourable Apex Court in the said ratio is as follows:-

> "We have no doubt that the respondent has committed an offence punishable under the provisions of Section 138 of the NI Act and is liable to be punished. The transaction in question took place between the parties in the year 1993, therefore, Section 138, as it stood at the relevant time, would be applicable to the present case. Section 138 provides imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both. Section 138 has now been amended and the penalty of imprisonment for a term which may extend to one year has been substituted by two years as provided by the amending Act of 2002 and the fine which may extend to twice the amount of the cheque. This has been prescribed as the punishment for the offence under Section 138 of the Act.

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> The object and the ingredients under the provisions, in particular, Sections 138 and 139 of the Act cannot be ignored. Proper and smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil Court is a long-drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee."

After observing above, the Honourable Apex Court has directed the accused to pay Rs.80,000/- (double the cheque amount) within a month to the complainant in default thereof to suffer SI for six months. I am of the opinion that the same yardstick can be applied for this appeal also. Point is answered accordingly.

12. In fine, the revision is dismissed, but with the following modification in the judgment of the first appellate Court in C.A.No.264 of 1999 by the VI Additional Judge, City Civil Court, Chennai. The accused is convicted under Section 138 of the Negotiable Instruments Act and directed to pay a sum of Rs.2,30,000/- (twice the cheque amount) within six weeks from this date in default to undergo SI for six months.

ssv

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To,

1.The VI Additional Judge,
City Civil Court, Chennai.

2.The Principal Sessions Judge,
Chennai.

3.The XIII Metropolitan Magistrate,
Egmore, Madras.

4.-do-The Chief Judicial Magistrate,
Egmore, Madras.

+ 1 cc to Mr. A. K. Lakshmipathy, Advocate SR No. 44410

+ 1 cc to Mr. S. Srinivasan, Advocate SR No. 44190

NSM(CO)
SR/25.7.2007

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